



## **DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**[OMHA-1901-N]**

### **Medicare Program; Administrative Law Judge Hearing Program for Medicare Claim and Entitlement Appeals; Quarterly Listing of Program Issuances—January through March 2019**

**AGENCY:** Office of Medicare Hearings and Appeals (OMHA), HHS.

**ACTION:** Notice.

**SUMMARY:** This quarterly notice lists the OMHA Case Processing Manual (OCPM) instructions that were published from January through March 2019. This manual standardizes the day-to-day procedures for carrying out adjudicative functions, in accordance with applicable statutes, regulations, and OMHA directives, and gives OMHA staff direction for processing appeals at the OMHA level of adjudication.

**FOR FURTHER INFORMATION CONTACT:** Jason Green, by telephone at (571) 777-2723, or by e-mail at [jason.green@hhs.gov](mailto:jason.green@hhs.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background**

The Office of Medicare Hearings and Appeals (OMHA), a staff division within the Office of the Secretary within the U.S. Department of Health and Human Services (HHS), administers the nationwide Administrative Law Judge hearing program for Medicare claim; organization, coverage, and at-risk determination; and entitlement appeals under sections 1869, 1155, 1876(c)(5)(B), 1852(g)(5), and 1860D-4(h) of the Social Security Act (the Act). OMHA ensures that Medicare beneficiaries and the providers and suppliers that furnish items or services to Medicare beneficiaries, as well as Medicare Advantage organizations (MAOs), Medicaid State

agencies, and applicable plans, have a fair and impartial forum to address disagreements with Medicare coverage and payment determinations made by Medicare contractors, MAOs, or Part D plan sponsors (PDPSs), and determinations related to Medicare eligibility and entitlement, Part B late enrollment penalty, and income-related monthly adjustment amounts (IRMAA) made by the Social Security Administration (SSA).

The Medicare claim, organization determination, coverage determination, and at-risk determination appeals processes consist of four levels of administrative review, and a fifth level of review with the Federal district courts after administrative remedies under HHS regulations have been exhausted. The first two levels of review are administered by the Centers for Medicare & Medicaid Services (CMS) and conducted by Medicare contractors for claim appeals, by MAOs and an Independent Review Entity (IRE) for Part C organization determination appeals, or by PDPSs and an IRE for Part D coverage determination and at-risk determination appeals. The third level of review is administered by OMHA and conducted by Administrative Law Judges and attorney adjudicators. The fourth level of review is administered by the HHS Departmental Appeals Board (DAB) and conducted by the Medicare Appeals Council (Council). In addition, OMHA and the DAB administer the second and third levels of appeal, respectively, for Medicare eligibility, entitlement, Part B late enrollment penalty, and IRMAA reconsiderations made by SSA; a fourth level of review with the Federal district courts is available after administrative remedies within SSA and HHS have been exhausted.

Sections 1869, 1155, 1876(c)(5)(B), 1852(g)(5), and 1860D-4(h) of the Act are implemented through the regulations at 42 CFR part 405 subparts I and J; part 417, subpart Q; part 422, subpart M; part 423, subparts M and U; and part 478, subpart B. As noted above, OMHA administers the nationwide Administrative Law Judge hearing program in accordance with these

statutes and applicable regulations. To help ensure nationwide consistency in that effort, OMHA established a manual, the OCPM. Through the OCPM, the OMHA Chief Administrative Law Judge establishes the day-to-day procedures for carrying out adjudicative functions, in accordance with applicable statutes, regulations, and OMHA directives. The OCPM provides direction for processing appeals at the OMHA level of adjudication for Medicare Part A and B claims; Part C organization determinations; Part D coverage determinations and at-risk determinations; and SSA eligibility and entitlement, Part B late enrollment penalty, and IRMAA determinations.

Section 1871(c) of the Act requires that the Secretary publish a list of all Medicare manual instructions, interpretive rules, statements of policy, and guidelines of general applicability not issued as regulations at least every three months in the **Federal Register**.

## **II. Format for the Quarterly Issuance Notices**

This quarterly notice provides the specific updates to the OCPM that have occurred in the three-month period of January through March 2019. A hyperlink to the available chapters on the OMHA website is provided below. The OMHA website contains the most current, up-to-date chapters and revisions to chapters, and will be available earlier than we publish our quarterly notice. We believe the OMHA website provides more timely access to the current OCPM chapters for those involved in the Medicare claim; organization, coverage, and at-risk determination; and entitlement appeals processes. We also believe the website offers the public a more convenient tool for real time access to current OCPM provisions. In addition, OMHA has a listserv to which the public can subscribe to receive notification of certain updates to the OMHA website, including when new or revised OCPM chapters are posted. If accessing the OMHA website proves to be difficult, the contact person listed above can provide the information.

### **III. How to Use the Notice**

This notice lists the OCPM chapters and subjects published during the quarter covered by the notice so the reader may determine whether any are of particular interest. The OCPM can be accessed at <https://www.hhs.gov/about/agencies/omha/the-appeals-process/case-processing-manual/index.html>.

### **IV. OCPM Releases for January Through March 2019**

The OCPM is used by OMHA adjudicators and staff to administer the OMHA program. It offers day-to-day operating instructions, policies, and procedures based on statutes and regulations, and OMHA directives.

The following is a list and description of OCPM provisions that were issued or revised in the three-month period of January through March 2019. This information is available on our website at <https://www.hhs.gov/about/agencies/omha/the-appeals-process/case-processing-manual/index.html>.

#### **OCPM Chapter 4: Parties**

The parties to an OMHA appeal are specified by regulation and vary based on the matter presented and the Medicare Part under which the appeal arises. This newly issued chapter identifies: (1) the different parties and potential parties to an appeal; (2) when an individual or entity may enter the proceedings as a substitute party; (3) when and how a beneficiary's appeal rights may be assigned to a provider or supplier; and (4) the procedures OMHA follows when an appellant's party status is unclear. There may be multiple parties to an appeal, and an individual's or entity's party status is generally not determined by the individual's or entity's financial interest in the outcome of the appeal, unless otherwise noted in this chapter.

## OCPM Chapter 7: Adjudication Time Frames, Case Prioritization, and Escalations—Section 7.4.3

This chapter was initially released on July 27, 2018, and was included in a quarterly notice published in the November 14, 2018 **Federal Register** (83 FR 56859). After the initial publication, we discovered that certain language from OMHA’s existing case prioritization policy had been inadvertently omitted when the policy was transferred to the OCPM. This revision to OCPM 7.4.3 corrects this error by clarifying that, if a beneficiary is represented by another party or by the same representative as another party, OMHA treats the beneficiary’s case as a Priority 3 appeal (*see* OCPM 7.4.2), unless: (1) the beneficiary is or would be liable for the costs (other than deductibles and coinsurance) of the items or services in dispute; (2) the case involves a pre-service request for coverage; or (3) one of the exceptions in OCPM 7.4.4 applies. The error we corrected was purely administrative, and had no effect on the manner in which OMHA prioritizes appeals.

## OCPM Chapter 9: Request and Correspondence Intake, Docketing, and Assignment

A number of actions may initiate (or reinstitute) proceedings at the OMHA level. This newly issued chapter provides information on where to direct appeal requests and submissions, and details the processes for docketing, acknowledging, and assigning cases. This chapter also explains when claims may be added or removed from an appeal and how to combine appeals. While this chapter deals primarily with processing appeals as paper files, it also includes guidelines for processing electronic case files in OMHA’s Electronic Case Adjudication Processing Environment (ECAPE).

## OCPM Chapter 19: Closing the Case—Sections 19.4.3, 19.5.1

This chapter was initially released on May 25, 2018, and was included in a quarterly notice published in the August 7, 2018 **Federal Register** (83 FR 38700). This revision to OCPM 19.4.3 clarifies that, in accordance with 42 C.F.R. §§405.1044(b) and 423.2044(b), if an adjudicator issues a consolidated decision, the adjudicator must also consolidate the administrative record and combine the appeals in the case processing system. OCPM 19.5.1 was also revised, to clarify that, when an appeal involves multiple beneficiaries, any copies of disposition documents (for example, a decision and any accompanying notices or enclosures), must be redacted to display only personally identifiable information (PII) that the recipient is entitled to receive.

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Jason M. Green

Chief Advisor, Office of Medicare Hearings and Appeals

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